IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7184 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULKARIM M MANSURI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7184 of 1993
MR JJ YAJNIK for Petitioner No. 1
Mr.K.P. Rawal, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: /12/2002

C.A.V. JUDGEMENT

The present petition is filed challenging the order dated 19.7.1993 dismissing the petitioner from service. The facts of the case are that the petitioner who was working as Section Officer, in the year 1988 was issued charge sheet dated 18.4.1988, a copy of which is produced at Annexure 'B' alleging that, a condition was added by the petitioner in order dated 21.11.87. Without there being any representation either from the contractor-- Shri 'Dilip Roadways' or the Collector, aforesaid order dated 21.11.1987 bearing no.1683/ 6821/ S.5, was issued wherein a condition was interpolated to the effect that, "Kilometers to and fro journey will be taken into account". As the Collector, Jamnagar brought this fact to the notice of the Government, the entire chapter came to light. The defence of the petitioner was that order dated 21.11.1987 was passed under the instructions of the Financial Adviser. But then the said defence was not found to be supported by the record. The circumstances which made the defence unbelievable wee:

(i) The chapter/ file of 'Shri Dilip Roadways' was closed.

(ii) There was no proposal received either from the Collector or from the contractor for payment of journey both ways.

(iii) Except the petitioner, no other person from the Department stated that the file was ever processed by him.

(iv) On perusal of the Despatch Diary dated 5.10.1997 which was included in the list of evidence it was revealed that no such file was received by the Financial Adviser or the concerned Finance Branch.

(v) The concerned Clerk of S.5 Branch in his statement dated 1.12.1987 and in the statement given before the Inquiry Officer on 3.5.1989 stated that he had noted the file of Jamnagar District at serial no.2 below serial no.1 in the Despatch Diary dated 5.10.1987, as per the instructions of the petitioner. He further stated that the file in question was not given to him by the petitioner for sending it to the Financial Adviser. He further stated that he had acted on verbal instructions of the petitioner in good faith as he was duty bound to obey such

instructions as the petitioner was Section Officer. From this it was inferred that the file was withheld, may be for destroying or for losing subsequently.

(vi) Eight copies of order dated 21.11.1987 were required to be prepared for sending to the concerned officer, but in fact only three copies were prepared and sent to (i) the Collector, Jamnagar, (ii) Accountant General, Ahmedabad, and (iii) Accountant General, Rajkot, and no copies of the order were sent to the other concerned offices/ persons. It can be inferred from the circumstances that this was done with a view to see that such manipulation does not attract the attention of the Department.

(vii) On a closer scrutiny of the Despatch Diary for the date, 5.10.1987 it was noticed that the entry in question (about the file of Jamnagar District) was made in ball point pen, while the other entries were made with fountain pen, which shows that the entry was an interpolation. It was made by the clerk concerned, who has stated in his statement dated 1.12.1987 and dated 3.5.1989, that he made the said entry on instructions of the petitioner.

2. The petitioner then demanded a copy of the said file and put forward a defence that the order dated 21.11.1987 was issued under the instructions and consent of the Financial Adviser. As the said file was not traceable it could not be supplied.

3. Mr.Yagnik, the learned advocate appearing for the petitioner submitted that earlier the petitioner had approached this Court by filing a petition being Special Civil Application No.5545 of 1993 as he apprehended dismissal pursuant to show cause notice dated 21.1.1992. Said show cause notice was served to the petitioner along with the inquiry report, to which the petitioner had filed his written submissions on 21.9.1992. The petition was disposed of by this Court by an order as under:

"The order of dismissal shall not be implemented for a period of one week after the order is served on the petitioner to enable him to take recourse to law."

The authorities passed order dated 19.7.1993 dismissing the petitioner which is under challenge in the present

Special Civil Application. The Court granted 'status quo' as prevailing on 22nd July 1993 at 3.45 PM. That was continued on 17.8.1993 when the Court was pleased to issue 'rule'. The Govt. preferred Letters Patent Appeal against grant of interim relief being Letters Patent Appeal No.401 of 1993, wherein stay against dismissal/ removal was vacated, but the petitioner was allowed to continue to occupy the quarter in which he was residing.

3. This Court while finally hearing the matter on 6.2.1996 was pleased to permit the petitioner, at his request to make a representation to the concerned authority for consideration of his case for imposing lighter penalty than the penalty of removal/ dismissal. Mr.K.P. Rawal, the learned Assistant Govt. Pleader appearing for the authorities informs that the representation made by the petitioner is rejected by order dated 14th May 1996.

4. Mr.Yagnik, the learned advocate appearing for the petitioner contended that the order of dismissal/ removal passed against the petitioner is absolutely illegal as there were no reasons for reaching the conclusions reached by the authorities. He submitted that in fact in the present case there was no material even for conducting 'departmental proceedings' against the petitioner. He submitted that the authorities had issued orders in respect of other districts having similar condition which is alleged to have been interpreted by the petitioner and therefore, the order passed against the petitioner is required to be declared an absolutely illegal and bad and in the interest of justice the same be quashed and set aside by this Court. Mr.Yagnik, the learned advocate relied upon various decisions of the Honourable the Apex Court and this Court, which are referred to in the petition itself with relevant extracts. They are as under :

(i) Union of India and others v. J. Ahmed, A.I.R. 1979 SC 1022,

(ii) Kashinath Dikshita v. Union of India and others, A.I.R. 1986 SC 2118,

(iii) Kan Singh, etc. v. State Transport Appellate Tribunal and others, A.I.R. 1988 SC 18,

(iv) Km.Neelima Misra v. Dr.Harinder Kaur Paintal and others, A.I.R. 1990 SC 1402,

(v) H.P. Thakore v. State of Gujarat & others, XX G.L.R. 1979 page 109,

(vi) B.R. Acharya v. State of Gujarat, XX(2) GLR 557,

(vii) Siddharth Mohanlal Sharma v. South Gujarat University, XXIII (1) GLR 233,

(viii) Bhimsing Sardarsing v. District Supdt. of Police & others, XXIII (2) GLR 410.

Mr.Yagnik relied upon these authorities to bring home the propositions, set out in the relevant paragraphs of the petition. All these authorities have no application to the fats of the present case as the facts of the case concern and the facts of the present case are not similar and therefore, ratio of the authorities could not applied to the present case.

5. To recapitulate, the facts of the present case are; that it was the petitioner who processed the file in the channel of submissions without there being any proposal either from the Collector or the concerned contractor, after the chapter was closed and then made a subordinate clerk of S.5 Branch to make an entry in the Despatch Diary at serial no.2 on 5.10.1987. This Clerk had stated in his statement dated 1.12.1987 that he was not given the file physically and that he made the entry on verbal instructions of the petitioner and he has reiterated the same before the inquiry officer on 3.5.1989, that is to say the file had never gone to the Financial Adviser or the concerned Finance Branch. That being so, there is no question of order dated 21.11.1987 being issued under the instructions and consent of the Financial Adviser. The petitioner having known the fact that the file is not going to be traced put forth a defence that the order was issued under the instructions and consent of the Financial Adviser and then made a demand of the said file. The petitioner could have pointed out that the file in question was dealt with by person/s other than petitioner himself, in the channel of submissions by which he could have proved himself not guilty. In fact, in the present case, there are circumstances which lead to draw a conclusion that it was the petitioner and petitioner alone who could be held guilty. The circumstances are enumerated in the beginning, but the same are reiterated as under.

(i) The file of Jamnagar District was closed. There was no proposal either by the Collector or by the

contractor to reopen the file and still the file was opened. The entry was made in the Despatch Diary by the clerk concerned at the instructions of the petitioner, he was not given the file physically.

(ii) As per normal procedure, eight copies are to be prepared of such order and the same are to be sent to different offices/ persons. This order was prepared only in triplicate sending a copy each to the Collector, Jamnagar, Accountant General, Ahmedabad and Accountant General, Rajkot. The petitioner has accepted in his final statement of defence that the typed order dated 21.11.1987 received by the Collector with initially typed date as 13th, which was thereafter corrected by hand writing to be 21st. The petitioner stated that he might have done so while signing the final order. Thus, it is a clear admission on the part of the petitioner that he had signed the order in question dated 21.11.1987. It is a matter of common knowledge of which judicial notice can be taken that, "it is the duty of the authority who is signing an order to check whether the competent authority has given his sanction on the file or not". The petitioner is the authority/ signatory of order dated 21.11.1987. On his instructions an entry is made in the Despatch Diary by the concerned clerk though the file was not given physically to him. Thus, the file had remained with the petitioner which the petitioner now demands and wants that the loss of that file shall result into discharge of the petitioner from the guilt. The petitioner could have got that benefit if he was able to render some acceptable explanation to the circumstances mentioned hereinabove. The petitioner has no acceptable, plausible explanation to any of the circumstances. The petitioner tried to explain the interpolation of the condition by saying that orders with similar condition were issued in case of other districts, but then the Under Secretary to the Government of Gujarat, General Administration Department in his affidavit in reply has replied this contention satisfactorily when he stated that the orders were issued having regard to the terms and conditions agreed by the contractor in the contract. Had it been the case of issuance of an order in normal course, the Govt. would have accepted the representation made by the petitioner. In the present case after the file of a particular district is closed without there being any proposal either from the Collector or from the contractor, an order came to be issued in suspicious circumstances. Therefore, the submissions made by Mr.Yagnik, the learned advocate for the petitioner do not find favour with this Court.

6. In the result, the petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No order as to costs.

(Ravi R. Tripathi, J.)
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